IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision NO. 2499 of 1999
Date of Decision: 27.9.2006

Mrs.Gian Kaur.

..... Petitioner.

Versus

Mrs.Krishna Anand.

..... Respondent.

CORAM: Hon'ble Mr.Justice Mahesh Grover

....

Present: Shri Amit Jain, Advocate for the petitioner.
None for the respondent.

....

Mahesh Grover,J.

The present petition has been preferred by the landlord impugning the orders of the Rent Controller and the Appellate Authority rejecting her prayer for eviction of the tenant-respondent on the grounds of material impairment and bona fide requirement.

The petitioner filed a petition under Section 13 of the East Punjab Urban Rent Restriction Act,1949 (hereinafter referred to as `the Act') seeking to eject the respondent from the second floor (Barsati) of House No.14, Sector 15-A, Chandigarh (hereinafter described as `the demised premises'). It was pleaded that the petitioner was the landlady of

the demised premises which were let out to respondent at a monthly rent of Rs.160/- including electricity and water charges. The eviction was sought primarily on four grounds, viz., (i) non-payment of rent since April,1989; (ii) the respondent had raised construction and made additions and alterations thereby materially impairing the value and utility of the demised premises; (iii) change of user; and (iv) personal necessity. The petitioner alleged that the respondent has constructed walls and has covered open verandah by converting it into a room and had also converted the area under stair-case to a store where she was storing books and other stationery items as she is running a book-shop. It was pleaded by her that she wanted to shift from Birmingham (U.K.) to Chandigarh where she was desirous of settling down permanently and since the demised premises was not being vacated, she was forced to take on rent house no.1060/1, Sector 39-B, Chandigarh consisting of four bed rooms, drawing-cum-dinning room, kitchen, bathrooms and one garage and was paying rent at the rate of Rs.2900/- per month. The petitioner also pleaded that she was a patient of asthma and a victim of other ailments.

Responding to the petition, the respondent tendered rent with effect from April,1989 till date along with interest and costs before the Court on 10.8.1992. The averments made in the petition were denied and it was pleaded that the fixtures were temporary in nature.

The Rent Controller extracted as many as six issues from the pleadings of the parties, which are as follows:-

1. Whether the respondent is liable to be ejected from the demises premises on the grounds mentioned in the petition?OPA

1A. Whether the respondent has changed the user?OPP

1B. Whether the respondent has made material alterations and additions in the premises impairing value and utility of the premises?OPP

1C. Whether the petitioner requires the premises for personal use and occupation?OPP

1D.Whether the tender made by the respondent is legal and valid?OPD

2. Relief.

Thereafter, while recording findings under various issues, the Rent Controller concluded that the respondent could not be evicted from the premises in question as neither the material impairment was established nor was the bona fide need proved. The eviction petition was accordingly rejected on 19.8.1997 which resulted in an appeal having been filed by the petitioner. The same was dismissed on 23.2.1999 by the Appellate Authority, Chandigarh.

Aggrieved by the findings of the Rent Controller and the Appellate Authority, the petitioner has filed the present appeal.

I have heard Shri Amit Jain, learned counsel for the appellant and perused the record. It may be mentioned that no one appeared on behalf of the respondent.

Shri Jain submitted that the tin-shed constructed on Barsati invited a notice from the Estate Office and the respondent was forced to demolish the said shed. He contended that the respondent converted the verandah into a room which was being used as dining area and this construction is also against the sanctioned plan on account of which the

building is liable to be resumed. Learned counsel further contended that the petitioner requires the demised premises for own use and occupation as she is desirous of settling down in Chandigarh. In support of his submissions, he placed reliance on Ram Chand Versus Gurbax Singh Duggal, 2003(1) P.L.R. 531; Parkash Chand and others Versus Thakur Dass and others, 2004(1) R.C.R. (Rent) 147 and M/S British Motor Car Co. Versus Madan Lal Saggi (D) and another, 2005(1) R.C.R. (Civil) 13.

Having thoughtfully considered the contentions of the learned counsel, I find force in them. There is sufficient evidence on record to show that the respondent had initially constructed a tin-shed in Barsati portion and that the verandah has also been covered. While appearing as RW1, the respondent has testified that the verandah had been covered after she had taken the demised premises on rent from the petitioner. In view of this candid admission of the respondent, it is duly established that the verandah had, indeed, been converted into a room and so, the only question that is to be determined is whether the said construction resulted in material impairment and affected the utility of the building.

The question whether the alleged additions and alterations materially impaired the value and/ or utility of the premises is a mixed question of law and fact and it has to be tested in the back-drop of the facts of each case. The impairment of the value and utility of the building has also to be seen from the view point of the landlord and not the tenant.

For reference purposes, Section 13(2)(iii) of the Act is reproduced below:-

"13. Eviction of tenants. - (1) xx xx xx

(2) A landlord who seeks to evict his tenant shall apply to the

Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the applicant, is satisfied -

(i) xx xx xx xx xx

(ii)xx xx xx xx xx

(iii)that the tenant has committed such acts as are likely to impair materially the value or utility of the building or rented land, or

(iv)& (v) xx xx xx xx xx xx

the Controller may make an order directing the tenant to put the landlord in possession of the building or rented land and if the Controller is not so satisfied he shall make an order rejecting the application:

Provided that the Controller may give the tenant a reasonable time for putting the landlord in possession of the building or rented land and may extend such time so as not to exceed three months in the aggregate."

The covering of verandah contrary to the sanctioned plan can expose a landlord to resumption proceedings. In Vipin Kumar Versus Roshan Lal Anand, 1993(1) R.C.R. (Rent) 675 (S.C.), their Lordships of the Apex Court examined the provisions of Section 13(2)(iii) of the Act andheld that once the landlord proves the factum of material alterations made by the tenant in the rented premises, the Court can infer its adverse effect on the value and utility of the building keeping in view the nature of the alterations.

In Durga Seeds Farm Versus Raj Kumar, AIR 1995 S.C. 1160,

the Supreme Court held that if the landlord is exposed to peril of resumption by raising any construction which is contrary to the terms of the allotment, then that would also fall within the realm of material impairment.

As noticed above, the respondent has admitted covering of verandah which has obviously exposed the petitioner to action by the Administration and considering it from the point of view of the landlord, it certainly impairs the utility of the demised premises. The respondent is, therefore, liable to be evicted on the ground of materially impairing the utility of the building/ demised premises.

That apart, the petitioner is desirous of occupying the demised premises for self use. The landlord is best judge of his needs. The petitioner has expressed the desire to use this premises by settling in Chandigarh. She was forced to take a house on rent in view of the reluctance of the respondent to vacate the demised premises. The petitioner cannot be deprived of the enjoyment of her own house and be compelled to stay in a tenanted premises. The landlord cannot be made a victim of dictates of the tenant. In Ram Dass Versus Ishwar Chander & others, (1988) 3 S.C.C. 131, their Lordships of the Supreme Court observed as under:-

> "Statutes enacted to afford protection to tenants from eviction on the basis of contractual rights of the parties make the resumption of possession by the landlord subject to the satisfaction of certain statutory conditions. One of them is the bona fide requirement of the landlord, variously described in the statutes as `bona fide requirement', `reasonable requirement', `bona fide and reasonable requirement' or, as in the case of the present statute, merely referred to as `landlord

> requires for his own use'. But the essential idea basic to all such cases is that the need of the landlord should be genuine and honest, conceived in good faith; and that, further, the court must also consider it reasonable to gratify that need. Landlord's desire for possession, however honest it might otherwise be, has inevitably a subjective element in it and that, that desire, to become a `requirement' in law must have the objective element of a `need'. It must also be such that the court considers it reasonable and, therefore, eligible to be gratified. In doing so, the court must take all relevant circumstances into consideration so that the protection afforded by law to the tenant is not rendered merely illusory or whittled down."

Similarly, in Shiv Sarup Gupta Versus Mahesh Chand Gupta, (1999) 6 S.C.C. 222, the Apex Court analysed the concept of bona fide requirement and said that the requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant refers to a state of mind prevailing with the landlord. It was further observed that the only way of peeping into the mind of the landlord is an exercise undertaken by the judge of facts by placing himself in the armchair of the landlord and then posing a question to himself – whether in the given facts, substantiated by the landlord, the need to occupy the premises can be said to be natural, real, sincere, honest and if the answer be in positive, the need is bona fide.

Applying the principles of law laid down in the aforementioned judgments to the facts of the present case, there is little hesitation to hold

that the need of the petitioner to settle down in Chandigarh in her own house in the evening of her life when she is suffering from various ailments can easily be termed to be bona fide and genuine.

For the foregoing reasons and in the facts and circumstances of the case, the revision petition is accepted and orders dated 19.8.1997 and 23.2.1999 passed by Rent Controller, Chandigarh and Appellate Authority, Chandigarh, respectively, are set aside. Accordingly, the eviction petition is allowed and the respondent is held liable to be evicted from the demised premises. However, she is granted three months' time to vacate the demised premises subject to the condition that she furnishes an undertaking before the Executing Court to do so within a period of one week of the receipt of a copy of this order which shall be immediately sent by the Registry at the expense of the petitioner.

September 27,2006 (Mahesh Grover)
"SCM" Judge